

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
ROBERT ALLEN MATHIS	:	BANKRUPTCY CASE
SUSAN STEPHENS MATHIS,	:	NO. 05-13583-WHD
	:	
Debtor.	:	
_____	:	
	:	
MUTUAL SAVINGS CREDIT UNION,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 06-1005
v.	:	
	:	
ROBERT ALLEN MATHIS	:	
SUSAN STEPHENS MATHIS,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Strike Amended Answer and Counterclaims and the Motion to Dismiss Counterclaims, filed by Mutual Savings Credit Union (hereinafter the “Plaintiff”), and the Motion for Leave to Amend Answer and Counterclaims, filed by Robert and Susan Mathis (hereinafter the “Debtors”). These motions arise in connection with a complaint to determine the dischargeability of a debt and the Debtors’ counterclaims for misrepresentation, negligence, and costs of litigation.

BACKGROUND

The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on October 5, 2005. Gary W. Brown (hereinafter the “Trustee”) was appointed as the Chapter 7 trustee. The Debtors did not list any causes of action as personal property on Schedule B. On November 17, 2005, the Trustee filed a report of no distribution, and the Debtors’ discharge was granted on January 26, 2006.

Prior to filing their bankruptcy petition, the Debtors obtained first and second mortgages on their residence from the Plaintiff. In their answer to the Plaintiff’s complaint objecting to the dischargeability of the mortgage loan debt, the Debtors allege that the Plaintiffs made material misrepresentations to the Debtors and were negligent when assisting the Debtors to complete the loan application required for the mortgage. The Debtors seek compensatory and punitive damages, as well as costs of litigation.

On March 9, 2006, the Plaintiff filed a motion to dismiss the counterclaims for failure to state a claim and on the basis that the Debtors lack standing to prosecute the counterclaims. On March 9, 2006, the Debtors filed an amended answer and on March 21, 2006, filed a motion for leave to amend the answer. The amended complaint simply adds a line to the prayer that states that “if any monies are awarded and recovered and turned over to the Chapter 7 trustee, these funds be applied to all creditors except Plaintiff”

CONCLUSIONS OF LAW

The counterclaims asserted by the Debtors against the Plaintiff arose prior to the filing of the petition. Accordingly, the counterclaims became property of the Plaintiff's bankruptcy estate. *See* 11 U.S.C. § 541; *Parker v. Wendy's Int'l, Inc.*, 365 F.3d 1268 (11th Cir. 2004). Once a cause of action becomes property of the bankruptcy estate, only the trustee has standing to prosecute the claim. *See Parker*, 365 F.3d at 1272. The cause of action remains property of the estate unless and until it is abandoned back to the debtor. *See id.*

In this case, although the Trustee has filed a report of no distribution, the Trustee has not abandoned the counterclaims pursuant to section 554 of the Code. Even if the Debtors' case had been closed, the counterclaims would not be deemed to have been abandoned because the claims were not listed on the Debtors' bankruptcy schedules. *See* 11 U.S.C. § 554(d). Therefore, the claims remain property of the estate, and the Trustee remains the only party with standing to prosecute the claims. There is no indication that the Trustee intends to intervene in this case or to abandon the claims. Accordingly, the Debtors' lack of standing is an appropriate basis for dismissal. *See Allston-Wilson v. Philadelphia Newspapers, Inc.*, 2006 WL 1050281 (E.D. Pa. Apr. 20 2006). However, to the extent that the Debtors have sought attorney's fees that may be permitted as a result of the filing of the Plaintiff's complaint, this claim did not arise pre-petition and will not be dismissed.

CONCLUSION

For the reasons stated above, the Debtors' counterclaims, other than a claim seeking attorneys fees, are hereby **DISMISSED**. The Debtors' Motion for Leave to Amend and the Plaintiff's Motion to Strike Answer are **DENIED** as moot.

IT IS ORDERED.

At Newnan, Georgia, this _____ day of June, 2006.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE